



MAY 21 2004

National Institutes of Health
Bethesda, Maryland 20892
www.nih.gov

TO: IC Directors
OD Senior Staff

FROM: Director, NIH

SUBJECT: Mandatory Request for Compensation Information for Closed Activities

As you know, over the past several months I have requested information about consulting arrangements NIH employees have held with pharmaceutical and biotechnology companies. We need this data to help us better manage our ethics program at NIH. As we move forward and consider changes to our ethics policies and procedures, this data will add historical context to our analysis. For example, data on the amount and prevalence of outside income NIH employees have earned from for-profit entities may help us to understand how more restrictive rules will affect the retention of highly skilled scientists. This data may also help to define the "norms" of outside activities so that we can better evaluate disproportionate payments or requirements associated with outside activities.

I appreciate your responses to my December 2003 request for the amount and type of payment that NIH employees received in their consulting arrangements with pharmaceutical or biotechnology companies since January 1, 1999. You appropriately sent me the data available to you. However, those data were insufficient to adequately inform us about the breadth of the compensation received from pharmaceutical and biotechnology companies. On January 27, 2004, the DHHS Associate General Counsel for Ethics and Designated Agency Ethics Official (DAEO) informed all HHS Operating Divisions that employees would be required to provide both retrospective (if applicable) and prospective compensation information as the agency's evaluation of any previously approved, ongoing outside activity, as well as to request prior approval for any new outside activity. Implemented in February 2004, this new procedure expanded our ability to collect past and future compensation information for ongoing activities.

In April 2004, I asked that employees voluntarily submit compensation information for outside activities with for-profit entities that were closed and completed during the period from January 1, 1999, through December 31, 2003. Unfortunately, this did not produce a sufficient amount of data to allow us to adequately describe past compensation received by NIH employees. Therefore, I must now require that every employee who has not previously disclosed this information report the following information to his or her IC Ethics Office by May 28, 2004:

- cash income (between January 1, 1999, and December 31, 2003) from any biotechnology or pharmaceutical company; and

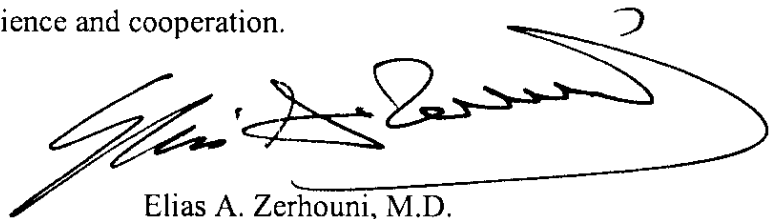
- any compensation (between January 1, 1999, and December 31, 2003) in the form of stock or stock options received from any biotechnology or pharmaceutical company or other for-profit entity (regardless of value).

For each approved Form HHS-520 (Request for Approval of Outside Activity), employees should indicate the information requested above by year and with specific amounts.

When communicating this request to your employees, you must include this memorandum and the attached Privacy Act statement, which describes the statutory basis for this request and some of the circumstances under which we might be required to disclose the information. You should also be aware that the House Energy and Commerce Subcommittee on Oversight and Investigations (Chairman James Greenwood [R-PA]) has requested some of this information as part of the Subcommittee's continuing review of ethics policies at NIH, and we will be required to share responsive information employees provide on past income with Chairman Greenwood in accordance with the Privacy Act.

As a reminder, employees should send this information by May 28 to their respective IC Ethics Offices, which will then forward the combined IC information to the NIH Ethics Office.

Thank you for your continued patience and cooperation.



Elias A. Zerhouni, M.D.

Attachment

Privacy Act Statement

The Ethics in Government Act, 5 U.S.C. App. § 101, *et seq.*, and Executive Order 12674, as amended by Executive Order 12731, as implemented by Part 2635 of Title 5 of the Code of Federal Regulations, authorize the collection of this information. The information is requested, pursuant to 5 C.F.R. § 2638.203(b)(10), for the purpose of evaluating the Department's supplemental ethics regulation to determine its continued adequacy and effectiveness in relation to current agency responsibilities. Disclosure of this information is mandatory for employees. The primary uses of this information are to allow agency ethics officials, and other agency employees, special government employees and others specifically requested to assist agency officials, assess the magnitude of overall risk of actual or perceived conflict of interest, evaluate whether real or apparent misuse of position occurred during the period from January 1, 1999, through December 31, 2003, as a result of the implementation of the government-wide code of ethical conduct, evaluate whether more restrictive regulations are likely to negatively impact employee retention, and to assist in defining the norms associated with a variety of outside activities. Additionally, this information may be disclosed: (1) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation; (2) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena; (3) to a source when necessary to obtain information relevant to a conflict of interest investigation or decision; (4) to the National Archives and Records Administration or the General Services Administration in records management inspections; (5) to the Office of Management and Budget during legislative coordination on privacy relief legislation; (6) in response to a request for discovery or for the appearance of a witness in a judicial or administrative proceeding, if the information is relevant to the subject matter; (7) to reviewing officials in a new office, department, or agency when an employee transfers from one covered position to another; (8) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record; and (9) to contractors and other non-Government employees working for the Federal Government to accomplish a function related to an Office of Government Ethics Government-wide system of records.